

COMBATING COPYRIGHT PIRACY: A MALAYSIAN PERSPECTIVE

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During the era of analog technology, musical works were stored by encoding the works in a physical medium, such as music cassettes, videotapes, vinyl records and other forms of magnetic tapes. Reproduction of any musical work from those media would result in deterioration in quality of the reproduced music. This was a direct result of the inherent nature of analog technology. At that time, music piracy, which typically took the form of the unauthorized reproduction of music into records or cassettes which were then illegally sold for commercial gains, was a phenomenon which was not as serious as it is today. The deterioration in quality upon subsequent reproductions of analog works and the limitations of reproduction equipment served as a natural obstacle to widespread music piracy. All these were to change with the advent of digital technology, which allowed the means of reproducing an unlimited number of perfect copies very speedily, without any loss in the quality of the reproduced music. CD and DVD burners became a common feature and contributed to the incidence of music piracy. At the same time, further developments in digital technology and the Internet have made it possible for Internet users to access, reproduce and store Internet contents. The music industry is currently undermined by the availability of file sharing of music services over the Internet using peer-to-peer technology. Peer-to-peer technology enables Internet users to exchange files with each other directly or through an intermediary server. In the light of the current serious state of music piracy worldwide and, also, in Malaysia, this paper examines the legal weapons which are available in Malaysia to combat music piracy, both in the physical and digital world. It also discusses the efforts of the Malaysian Government and music organizations in the country to curb the incidence of music piracy.

Introduction

Copyright piracy is a phenomenon that is of international significance and continues to plague the governments of many nations, particularly the least developed and developing nations. Although copyright piracy is an age-old concern, combating it remains till today an issue that beleaguers many governments and all copyright industries. The incidence of copyright piracy is closely related to the advancement in technology. Prior to printing technology, the process of copying a work was highly laborious and expensive. However, things were to change when printing press technology was invented. In the United Kingdom, piracy of books flourished as a result of the advent of the printing press and the government responded by enacting the first modern copyright statute known as the Statute of Anne 1709 to curb copyright piracy. As technology marched on, reproduction equipment as well as reproduction techniques became more sophisticated and this further facilitated the ease of reproducing copies of works. Not only did the quality of the copies improved, but the ability of reproduction equipment to produce large quantities of copies within a shorter period of time increased tremendously. With the rise of the Internet coupled with new methods of distributing copyright works which it offers to the digital community, novel issues have surfaced which have challenged the traditional modes of combating copyright piracy. The situation is aggravated by the fact that the Internet is not constrained by national boundaries and the world is a global village where all forms of copyright piracy take place.

In the late 1970s, advanced countries such as the United States of America, the United Kingdom, France and Japan, pressed for the inclusion of counterfeiting and piracy issues

within the discussion of the then General Agreement on Tariffs and Trade (GATT).¹ These countries, which were exporters of intellectual property-based products, incurred substantial losses of revenue because of the rampant availability of pirated goods in the importing countries. The explosion of pirated goods was particularly prevalent in the markets of developing countries because of lax laws on intellectual property protection and enforcement at that time. Ensuing negotiations led to the increasing recognition that piracy and counterfeiting strongly impeded upon a country's economic progress and development. As a consequence of the negotiations in GATT, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) was created in 1994 within the framework of the World Trade Organization (WTO). TRIPs represents the latest multilateral treaty on intellectual property protection and has finally cast intellectual property protection within the realm of international trade. TRIPs provides for broad enforcement mechanisms and also deals with border controls of infringing goods. Disputes between signatories may be brought to the WTO panel and failure by any signatory to comply with the panel's decision may result in trade sanction being instituted. It therefore behooves the governments of all nations that are concerned with international trade to place emphasis on combating copyright piracy with the ultimate aim of eradicating it.

While international trade and foreign investment concerns remain a significant driving force for most governments to launch attacks against copyright piracy, there are clearly other reasons for curbing this phenomenon. In the long run, progress in the arts and science is vitally dependent on the

¹ In 1994, the World Trade Organization Agreement which established the World Trade Organization replaced the GATT.

continued creativity of authors. The authors need to be rewarded for the time, labor and finance expended by them in creating the works. A large proportion of authors rely on the profits generated from their created works for their livelihood. If copyright piracy is not curbed, there is very little incentive for authors to create and, as a consequence, progress in the arts and science will be severely retarded to the detriment of the public. Thus, fostering creative activities is closely related to appropriate copyright protection and the government's vigilant efforts at combating copyright piracy. Apart from this, copyright piracy raises morality issues. The oft-quoted idiom 'reap what you sow' applies with all truism in the realm of copyright.

The purpose of this paper is to discuss the approaches which the Malaysian government has thus far adopted in its effort to combat copyright piracy. The Malaysian government does not tolerate any form of copyright piracy and views it as seriously as any other crimes which the government has to address.² In discussing the governmental approaches to combating copyright piracy, the paper is divided into four parts. The first part examines the current copyright piracy situation in four major copyright industries in Malaysia, namely, music, movie, software and book industries. It also discusses some of the steps taken by the industries over the years to curb the incidence of copyright piracy. The second part discusses the various strategies which the Malaysian government has adopted in its warfare against copyright piracy. The third part of the paper considers the challenges faced by the government and copyright industries in combating copyright

² See paper delivered by Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia, at the Second Global Congress on Combating Counterfeiting and Piracy held in France on 14-15 November 2005.

piracy in the light of the increasing sophistication of copyright pirates and their ability to harness the boon of technology to further their piratical activities. The paper finally concludes with some thoughts on the overall efforts of the government in its warfare against copyright piracy

1. Copyright piracy in Malaysia: The scenario

In Malaysia, a number of major factors serve as driving forces behind the government's persistent fight against copyright piracy. One of the significant push is the fact that Malaysia was placed in the United States Trade Representative (USTR) Special 301 Priority Watch List for the years 2000 and 2001. At that time, the country's vigilance over copyright piracy was less than satisfactory and the stigma attached with being placed on the US 'top priority' Watch List served as a wake-up call to the government to take stern measures to improve the piracy situation in the country. In the year 2002, significant improvements were made in the protection of intellectual property rights and this led to the country being moved from the Priority Watch List to the Watch List in that year. Statistically, the copyright piracy rate in the country was reduced from 85% in 1999 to 75% in 2001 and further reduced to 50% in 2004-2006.³

Another driving force which propelled the government towards more vigilance in curbing copyright piracy is the recognition of the long term disastrous impact on local economy and the economic instability caused if piracy were to prevail in an open market. In

³ The statistics were made available by Iskandar Halim bin Haji Sulaiman, the Deputy Director-General of the Enforcement Division of the Ministry of Domestic Trade and Consumer Affairs, Malaysia at the WIPO National Workshop on Enforcement of Intellectual Property Rights held at Kuala Lumpur on 21 May 2007.

addition, combating copyright piracy is an imperative aspect of the development of the country's Multimedia Super Corridor (MSC), which is a government-sponsored Silicon Valley-type project to attract Internet-based commercial ventures to the country. To secure the success of the MSC, the government must be able to attract foreign companies to operate and invest in the country and, undoubtedly, the foreign investors must be confident that the country does not condone any forms of copyright piracy. Related to this is Item 6 of the MSC Bill of Guarantees whereby Malaysia pledged to be the leader in intellectual property protection in the region. Furthermore, under the country's Ninth Malaysia Plan⁴ and the Third Industrial Master Plan,⁵ Malaysia actively seeks to encourage companies to take the lead and invest in new growth areas. Clearly, these aspirations cannot be realized if appropriate intellectual property protection is not in place in the country. In today's knowledge-based economy, the Malaysian government is well aware that intellectual property-based industries are the growth engines that drive the economies of most

developed nations around the world.

The government recognizes that if local copyright industries, such as the music, movie, software and book industries, were to thrive and grow healthily, there is a need to protect copyright owners from the dire consequences that flow from rampant copyright piracy. Without that assurance, local copyright industries will not develop at all and the country will continually resort to importing copyright works. Another factor is the need for Malaysia, as a signatory to important treaties dealing with copyright such as the Berne Convention for the Protection of Literary and Artistic Works 1883 and the abovementioned TRIPs Agreement, to ensure that the minimum levels of copyright protection spelt out in the treaties are in place in local laws and mechanisms exist locally to ensure compliance with copyright laws.

The total number of raids and cases brought against copyright pirates by the Ministry of Domestic Trade and Consumer Affairs for the years 2004 to 2007 are as follows:⁶

YEAR	TOTAL NUMBER OF PREMISES RAIDED	NUMBER OF CASES	TOTAL AMOUNT FORFEITED (RM)
2004	25,508	4,390	59,216,528.00
2005	38,069	3,812	100,370,598.00
2006	38,166	3,792	120,001,103.00
2007	70,863	2,720	54,907,108.49

The Ninth Malaysia Plan is a national plan for the years 2006 to 2010 to enhance the competitiveness and resilience of the national economy.

The Third Industrial Master Plan was launched by the Malaysian government in 2006 to drive the country's industrialization to a higher level of global competitiveness, through the transformation and modernization of the manufacturing and services sectors.

⁶ See the Ministry of Domestic Trade and Consumer Affairs webpage at <http://www.kpdnhep.gov.my/index?action=pub&pub=statistik: bilangan tindakan membentaras cetak rompak>.

1) Music piracy

Three forms of copyright piracy continue to plague the music industry and if left unabated, could potentially harm the industry severely. These are the optical media piracy, the mobile music piracy in the form of over-the-counter sales and the peer-to-peer network piracy. The severity of the optical media piracy has waned over the years because of the government's strict stance on piracy of optical media but the extent of piracy using the peer-to-peer technologies remains unclear.

The optical media piracy problem began in the late 1990s when organized criminal enterprises involved in the production of illegal optical media for worldwide distribution found Malaysia to be an attractive place to conduct their illegal activities. In the year 2001, there were 38 optical disc plants in the country which were legally licensed by the government but it was estimated that there were about 200-300 optical media production lines in the country. The International Intellectual Property Alliance stated that the total capacity of those plants far exceeded the legitimate demand for optical media discs, whether for local consumption or for authorized export.⁷ Evidence of this may be seen in the availability overseas at that time of pirated optical discs which originated from Malaysia. Pirated music CDs from Malaysia have been seized throughout Asia, Australia, New Zealand, Latin America and Europe.⁸ At the same time, pirated optical discs were available in abundance through pirate shops and night market stalls locally, which represented the major distribution and retail network. As a result, it was reported that the Malaysian market for recorded music had

⁷ See International Intellectual Property Alliance 2001 Special 301 Report on Malaysia at 166.

⁸ See International Intellectual Property Alliance 2001 Special 301 Report on Malaysia at 166.

suffered so severely that sales by the local music industry dropped 75% between 1996 and 2000.⁹ To arrest the harmful effects posed by the optical media piracy, the Malaysian government enacted the Optical Disc Act 2000 which came into force on 15 September 2000¹⁰ and effectively put in place a comprehensive framework for the government to control and regulate the production of optical discs in the country.

Even before the coming into operation of the Optical Disc Act 2000, the enforcement team had actively carried out raids against pirate optical media production plants and retail outlets by utilizing the Copyright Act 1987. In the year 2002, the government vigorously employed the all-encompassing Optical Disc Act 2000 to conduct inspections and raids. As the enforcement team diligently enforced the legislation, optical media pirates changed their mode of distribution from stalls and retail outlets to hawking the illegal products door to door in residential and office premises. At the same time, children have also been used as peddlers of pirated products. The Internet became an excellent means of marketing the illegal optical discs and the products were then delivered to the customers via mail or courier service.¹¹ Apart from the adoption of different distribution channels to avoid detection, pirates have also shifted production from conventional optical media pressing facilities to more dispersed CD-Recordable operations, including 'burn-to-order' facilities.¹² At times, raids conducted

⁹ See International Intellectual Property Alliance 2001 Special 301 Report on Malaysia at 166, citing Ghani, *Piracy Woes*, Malay Mail, 16 December 2000 at page 5.

¹⁰ The Optical Disc Act 2000 is discussed in greater detail below at Section II(ii).

¹¹ See International Intellectual Property Alliance 2002 Special 301 Report on Malaysia at page 486, which quoted Ng, *Net-based illegal VCD ring busted*, The Star, 26 August 2001.

¹² See International Intellectual Property Alliance 2002 Special 301 Report on Malaysia at page 486.

on premises suspected of carrying out piratical activities revealed pirate facilities with CD-R burner towers and 'burned' CD-Rs containing international and local music repertoire.

As part of the government's determination to fight against optical media piracy, it had also worked closely with the affected industries. The most vigorous crackdown by the government on illegal optical media took place in May to June of the year 2003. During that period, the government mobilized approximately 800 police officers and 250 officials from the Ministry of Domestic Trade and Consumer Affairs and other enforcement agencies to conduct a crackdown on pirate optical disc distributors and retailers as well as the criminals that supported them.¹³ The crackdown operation saw the government conducting almost 2,000 raids and this resulted in the seizure of more than 3.15 million pirate optical discs and 153,369 pornographic VCDs valued at RM16.22 million as well as the arrest of 1,046 individuals.¹⁴ The operation resulted in a drastic reduction in the number of optical disc retail piracy, particularly the availability of street vendors.¹⁵ Pirates had to carry out their activities underground, for instance, by approaching customers on the street who would then wait for the pirate to obtain the pirated copies from another secret location.¹⁶ Another deceptive method employed was to display original products on the shelves and, upon request by customers, bring out pirated copies for quick sale.

In subsequent years, raids continued to be strenuously conducted against licensed and unlicensed optical disc plants and retailers. In 2005, the music industry reported that there were significant numbers of copies of pirated CDs being imported into the country from China, which indicated that the optical disc situation in relation to music in the country had improved.¹⁷ In 2006, ten successful raids were conducted on licensed factories and two raids on unlicensed facilities.¹⁸ During those raids, the enforcement team seized or sealed 14 DVD replicating machines and 11 VCD replicating machines which the team suspected were used to manufacture pirated optical discs.¹⁹ Criminal prosecutions were commenced against a number of companies and directors of the plants.²⁰ Further efforts by the government to curb optical disc piracy led to a reduction in the number of licensed plants to 27 in the year 2007, although there remained a number of clandestine plants.²¹ To avoid detection, pirates have resorted to other means of conducting their business. For instance, in March this year, a raid by the police team revealed that optical media pirates are now more meticulous in carrying out their operations.²² The pirates involved in that raid had different locations for the purposes of packing, distribution and production. Yet another method of avoiding detection is to store pirated goods in underground storerooms. In a raid in early April 2008, the enforcement team had conducted a number of prior raids on the

¹⁷ See International Intellectual Property Alliance 2006 Special 301 Report on Malaysia at page 310.

¹⁸ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 336.

¹⁹ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 336.

²⁰ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 336.

²¹ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 272.

²² See New Straits Times, 16 March 2008.

See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 343.

See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 343.

See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 343.

See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 343.

premises before the officers realized that the premises had a secret underground storeroom.²³ Upon examining the premises, the officers discovered that the owner had fixed 4 steel doors in 3 different storerooms on the first floor of the premises as a method to divert the authority's attention. The owner had also placed a rack with bags to hide the entrance to the underground storeroom. The tunnel that led to the storeroom was about 10 meters long and was believed to have been used as a garage for special vehicles before it was turned into a storeroom. Apart from such new tactics, other pirates have resorted to selling their products through showing catalogues to their clients to avoid detection by the enforcement officers.

Beginning from the year 2006, with advances in mobile device technology, mobile music piracy in the form of over-the-counter sales began to gain momentum in the country. The demand for digitized music has been increasing among Malaysians as a result of growing broadband penetration in the country, the larger storage capabilities of personal computers and music-playing handheld devices such as mobile phones and MP3 players. Illegal mobile downloads onto devices were available in shopping complexes and other fixed premises. There have been suggestions that music sales in the country were plummeting largely as a result of the illegal downloads.²⁴ In particular, at the end of 2007, the prevalence of illegal ringtone dealers for mobile phones became a matter of grave concern for the music industry in the country. The ringtone is the audible ringing that the calling party hears prior to the call being answered at the receiving end. It was estimated that there were about 200 illegal ringtone dealers in the country at that time.²⁵

In an effort to wipe out illegal ringtone dealers in the country, the government's enforcement team together with the national music industry trade association issued warning letters to the illegal operators demanding that they shut down the illegal businesses failing which legal proceedings would be brought against them. As a result of the warning letters, about a third of the illegal ringtone dealers had stopped their illegal activities and another one-third had legalized their operations. Of the remaining, raids were conducted on their premises and in some cases the proprietors of the illegal business were arrested.²⁶ Another step taken to reduce the illegal ringtone music piracy was carried out by Maxis Communications, which is one of Malaysia's largest telecommunication companies, by reducing their fee for the monthly 'rental' of each song chosen by subscribers.

A third form of piracy which confronts the music industry is the peer-to-peer file sharing networks that have proliferated on the Internet. Music may be downloaded directly to a computer or an MP3 player. While many different sites exist on the Internet that allow users to purchase music online or obtain some legal downloads for free, there are as many illegal sites which allow music to be shared illegally. Although as yet, there has not been any reported court cases in Malaysia on the legality or otherwise of peer-to-peer networks as a means to share music online, leading foreign cases, such as *A & M Records Inc v Napster Inc*²⁷ and *Metro-Goldwyn-Mayer v Grokster*²⁸ in the United States of America, have clearly held that music file sharing using illegal peer-to-peer network is illegal. Currently, the extent to which peer-to-peer technologies are being used for music piracy

²³ See My Metro, 2 April 2008.

²⁴ See The Star, 21 September 2007.

²⁵ See The Star, 21 September 2007.

²⁶ See The Star, 21 September 2007.

²⁷ 239 F. 3d 1004 (9th Cir 2001).

²⁸ 259 F. Supp. 2d 1029 (CD Cal, 2003).

in Malaysia is still not clear.²⁹ However, given the fact that Malaysia has about 11 million Internet users and the government has recently placed more focus on broadband penetration in the country, it would not be incorrect to conclude that with time Internet-based piracy would increasingly become a threat to the music industry in the country.

The music industry in Malaysia has also set up a national music industry trade association known as the Recording Industry Association of Malaysia (RIM) to represent the locally incorporated recording companies in the country and to address various industry problems, the foremost of which is the increasing piracy of the recordings of its members.³⁰ One of the main functions of RIM is to ensure that the intellectual property rights of its member recording companies are adequately protected and towards that end, RIM conducts anti-piracy activities and lobbies to increase the copyright protection of its members under existing laws.³¹

²⁹ See International Intellectual Property Alliance 2007 Special 301 Report for Malaysia at page 333.

³⁰ RIM was set up almost thirty years ago, that is, on 12 December 1978.

³¹ RIM works closely with the government in its anti-piracy activities, including the many raids mentioned above relating to optical media piracy. Much of RIM's work is focused on the protection of its members' copyright although it also devotes some time to the development of its member recording companies. RIM's subsidiary, Public Performance Malaysia Sdn Bhd, which was incorporated in 1988, is the collecting society for Malaysian recording companies that are members of RIM and all international recording companies that have exclusively licensed RIM members to control their rights in Malaysia. There are two other collecting societies which are concerned with music owners' rights. These are the Music Authors Copyright Protection Bhd (MACP) and Performers and Artistes Rights (M) Bhd (PRISM). MACP, which was incorporated

According to RIM, sales of physical music have dropped drastically since 1996 although this is compensated in recent years by a sharp rise in the sales of digital music. In the light of the success achieved by the government's enforcement team on pirated optical media, the drop in physical music sales cannot be attributed primarily to piratical activities. Other factors, such as the increasing fad for digital music and the changing preferences of the public, could possibly contribute significantly to this drop. This is supported by the fact that in the year 2006, digital music sales in the country was estimated to be RM15.5 million compared to 2005 where the estimated sale was RM5 million. During the corresponding period, the estimated sale of physical music was RM87 million for the year 2006 and RM97 million for the year 2005.

One of the novel steps taken by RIM to arrest the music piracy problem is to commence legal actions against landlords of shopping complexes who rented out their premises to tenants involved in selling pirated optical discs. RIM would initiate the process by conducting test purchases of retail outlets in shopping complexes. Pursuant to those test purchases, RIM would send notices to tenants who were involved in music piracy. The notices were also copied to their landlords. In the event the tenants did not take any action to rectify the situation, the government's enforcement team would raid the premises. A second notice would be sent out which would be addressed to the landlords as persons having control over the premises but yet failed to take steps to stop the illegal activities. The landlords would be required to inform RIM as

in 1989, comprises members who are composers, lyricists and publishers. PRISM, which was incorporated in 2001, comprises members who are recording artistes and musicians.

to the steps that would be taken to curb those illegal activities, failing which court action might be taken against the landlords.

2) *Movie industry*

Three forms of copyright piracy in relation to the movie industry are worthy of consideration. These are the optical media piracy of movies, the peer-to-peer file sharing of movies and camcorder piracy.

With regard to the optical media piracy of movies, similar issues that plague the music industry apply also to the movie industry. Prior to the government's crackdown on illegal optical media piracy in the year 2002, pirated VCD and DVD versions of new films were readily available on the streets of Kuala Lumpur within days after the new films were released. As mentioned earlier, the government stepped up the number of raids on illegal optical media premises in the year 2002. In that year, the motion picture industry together with the government's enforcement team, conducted 20 Internet or export related raids, 82 warehouse raids and 511 retail raids.³² In a series of raids held during the period from August to November 2003, the motion picture industry managed to put a stop to the export of thousands of pirated discs from the country.³³ At that time, there was a change in the trend of exporting illegal optical discs because the pirates began to utilize the services of the mail and the government had sought the cooperation of courier companies and the National Post to assist in detecting and stopping such exports.³⁴ There was a case in which the police at the Kuala Lumpur International

Airport stopped pirated products from being exported from Malaysia and arrested 2 Mauritians who were on the verge of smuggling pirated music, film and software products out of the country.³⁵

In subsequent years, developments were made to overcome the export of illegal optical discs because it was found that pirate motion picture DVDs and VCDs from Malaysia were also available in Australia, the United Kingdom, the United States of America, South Africa and Europe.³⁶ In view of the significant negative implications of the export of illegal optical discs, the Kuala Lumpur International Airport authorities had allowed industry representatives to maintain a permanent staff at the airport to monitor the post and cargo center.³⁷ It was also noted that there was a correlation between syndicates involved in copyright piracy and other organized crimes, such as people smuggling, pornography and drug smuggling. Regular raids conducted by the government through the years had been successful at driving piracy out of shopping complexes and other fixed premises in some parts of the country.³⁸ However, optical media piracy of motion pictures and music continued to exist through vendors at night markets.³⁹

To avoid detection, a number of optical disc pirates have recently changed their modus operandi from factories to residential houses. For instance, in early this year, the government's enforcement team raided a terrace house in a suburb of Kuala Lumpur

³² See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 535.

³³ See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 535.

³⁴ See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 535.

³⁵ See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 535.

³⁶ See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 342.

³⁷ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 364.

³⁸ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 334.

³⁹ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 334.

where they seized pirated versions of the new Hong Kong science fiction cum comedy film known as 'CJ7', which was released on 31 January 2008 in Hong Kong.⁴⁰ In the raid, the team also seized 152 VCD burners and other pirated DVDs of various titles. It was estimated that the illicit reproduction plant could produce more than 20,000 copies of VCDs in a day and could make a monthly profit of RM100,000.

As in the case of the music industry, illegal file-sharing of movies over the Internet is known to exist but the extent of its severity in this country is not known yet. The limited broadband penetration in this country at the moment may curtail the proliferation of this form of piracy although this may change as the government expands the country's broadband penetration.

Camcorder piracy, which is another form of movie piracy, involves the use of video cameras or other recording appliances to copy, without any authorization, a movie during exhibition in a movie theater. This is usually carried out by professional camcorder pirates who would copy the movie very early in its theatrical release. The master recordings are then utilized to produce illegal copies of the movie and sold on the black market as well as on street corners and night markets during the movies' theatrical release and well before their international debuts.⁴¹ Camcorder piracy has been identified as the cause of many motion pictures becoming available over the Internet, such as on peer-to-peer networks, the transfer protocol sites and Internet Relay Chat rooms. In the year 2006, 13 pirated versions of titles belonging to members of the Motion Picture Association which were distributed globally were forensically linked to

illegal copies being made on camcorders in Malaysian cinemas.⁴² However, in 2007, the government clamped down on such activities and the instances of Malaysian-sourced piracy ceased.⁴³ From January to November 2007, it was reported that there were 30 illegal camcording cases, with 32 arrests made in cinemas nationwide.⁴⁴ As a result of the vigilant enforcement actions, there was an increase in the number of cinema viewers from 12,900,000 in the year 2000 to 37,500,000 in the year 2007.⁴⁵ The profits made by cinemas during the year 2000 was RM96,800,000 and this increased to RM325,500,000 in the year 2007. Currently, Malaysia does not have any statute dealing specifically with illegal camcording although it would appear that section 41(g) of the Copyright Act 1987 which prohibits the possession of contrivances used for the purposes of making infringing copies may criminalize illegal camcording activities.

The movie industry in this country is overseen by the Motion Picture Association (MPA), which represents the interests of major motion picture companies in the global marketplace. The MPA conducts investigations around the world to monitor the movie piracy situation on behalf of its members and assists with the criminal and civil litigation on movie piracy. The MPA works closely with the government to curb movie piracy.⁴⁶

⁴² See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 334.

⁴³ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 271.

⁴⁴ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 271.

⁴⁵ See Nanyang Siang Pao, 3 March 2008.

⁴⁶ The MPA member companies include Buena Vista International, Inc.; Paramount Pictures Corporation; Sony Pictures Releasing International Corporation; Twentieth Century Fox International

⁴⁰ See Sin Chew Daily, 3 February 2008.

⁴¹ See International Intellectual Property Alliance 2006 Special 301 Report on Malaysia at page 310.

3) Software piracy (including entertainment software piracy)

For many years, business software and entertainment software piracy has challenged the government's enforcement team. Three areas relating to software piracy are prevalent in the country. The first is the relatively easy availability of pirated copies of software in the country not merely for local consumption but also for overseas export. The second is the rise of Internet cafés and their use of pirated entertainment software. The third is the end-user piracy issue.

As recent as in 2007, it was noted that the export of pirated entertainment software originating from Malaysia was detected as far away as Paraguay despite the fact that Malaysia had addressed its export piracy problem with regard to most sectors.⁴⁷ In the years 2001 and 2002, entertainment software companies reported that it was nearly impossible to conclude any legitimate sales in the country because of the high piracy levels in that industry. Pirate entertainment software products continued to be exported out of Malaysia partly as a result of the optical disc factories having the capacity to over-produce pirated optical discs.⁴⁸ In October 2007, the Entertainment Software Association worked together with the Motion Picture Association to launch an anti-piracy program so as to reduce the large-scale replication and

Corporation; Universal International Films, Inc.; and Warner Bros. Pictures International, a division of Warner Bros. Pictures Inc.

⁴⁷ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 269.

⁴⁸ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 332 and International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 269.

export of pirated entertainment software in the country.⁴⁹ The anti-piracy program was named 'Operation Games Attack'. The anti-piracy program was a great success and resulted in numerous raids of factories, retail shops, burner labs and a printing facility.⁵⁰ Prior to the partnership with MPA, copyright owners of entertainment software in the country had to individually enforce their rights because there was no organization to represent them all.

Internet cafés began to spring up in the country beginning from the year 2003. Through the cafés, Internet access could be obtained but they also allowed customers to use illegal copies of copyright materials, particularly illegal entertainment software. Many of the entertainment software were pirated copies.⁵¹ In 2004, the government managed to convert some cafés to legitimate operations through cooperation with some entertainment software publishers. Cease-and-desist letters were sent to café owners and, at times, this led to settlements. In situations where the owners failed to put a stop to the illegal practices, local authorities have conducted raids and seized the cafés' computers.⁵² In 2007, Internet cafés adopted a new tactic to evade enforcement officers which involved Internet café operators entering into arrangements with third parties that provided access to an off-site server that stores the game software.⁵³ The café's on-site

⁴⁹ See The Star, 1 November 2007 and <http://www.theesa.com>.

⁵⁰ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 269.

⁵¹ See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 343.

⁵² See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 366.

⁵³ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 269.

server would then be granted access to the game software on the off-site server which effectively controlled all activities related to the use of the game that was accessed off-site.⁵⁴ In turn, the café's server permitted access to the game software to the many computer machines located on-site.⁵⁵ The off-site server usually required the on-site server to authenticate itself and if the link to the off-site server was severed, all services that were available to the café's computers through the on-site server would be rendered inoperable.⁵⁶ Thus, once the link is broken, the café's computers are effectively wiped of all data or evidence of infringing activity.⁵⁷ This new scheme has confounded enforcement officers.

While the above types of piracy are important forms of software piracy affecting the industry, the greatest loss to the software industry, not only in Malaysia but worldwide also, arises from the unauthorized use of copyrighted software in businesses or end-user piracy. End-user piracy usually occurs when a company reproduces copies of software without authorization and this commonly takes the form of a licensed copy of software which is installed on multiple computers. The year 2007 recorded the highest number of raids conducted against companies that used illegal software. A total of 55 companies were raided in that year for suspected use of unlicensed software.⁵⁸ The directors and senior management of companies involved in end-user piracy are also liable for prosecution. Despite the raids

that have been conducted, end-user piracy in the workplace in Malaysia continues to cause large losses to Business Software Alliance companies.⁵⁹

The Entertainment Software Association (ESA) is the United States trade association which oversees the global business and public affairs needs of the companies publishing interactive games for video game consoles, handheld devices, personal computer and the Internet. The ESA has the task *inter alia* of combating copyright infringement of entertainment software.

4) Book piracy

In the year 2001, it was reported that the illegal photocopying of college textbooks, computer-related books, and scientific/technical/medical texts in and around universities in Malaysia was widespread.⁶⁰ Such a situation was aggravated by the fact that university officials appeared to condone the illegal photocopying activities. Another concern for publishers was the unauthorized reprinting of books on offset presses. It was said that the government had been extremely slow in commencing prosecutions in situations of successful book piracy raids and in the few convictions that had been obtained, the fines were very low and did not serve as a deterrent to the illegal commercial photocopying trade.⁶¹ It was then concluded that the government's enforcement division had been less receptive of complaints from book publishers compared to complaints involving the optical media. In subsequent years, the number of raids against illegal photocopy premises increased and as a

⁵⁹ See International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 269.

⁶⁰ See International Intellectual Property Alliance 2001 Special 301 Report on Malaysia at page 172.

⁶¹ See International Intellectual Property Alliance 2001 Special 301 Report on Malaysia at page 172.

result, more pirates moved underground or distributed out of their vehicles.⁶² There were instances where photocopy shops that had been raided closed down subsequently but moved to other locations. Residences were also used by pirates as photocopy centers and many of those residences had high-tech video cameras installed to spot raiding enforcement officers.⁶³ Where the residences were in apartments or condominium, the pirates had the additional benefit of security guards at the entrance to the premises who could then alert the pirates if enforcement officers arrived to inspect or conduct a raid. Student leaders have also been recruited to secure orders among fellow students and pass them to pirates.⁶⁴ To avoid detection by the enforcement officers, the pirates would often package copies of the books with new cover designs.

In the year 2004, the Association of American Publishers conducted a copyright awareness poster campaign in the country whereby posters were distributed to public and private colleges. Following that, several high-profile raids were successfully conducted near Universiti Sains Malaysia.⁶⁵ However, book publishers complained that there were inconsistencies in the raiding processes at the ground level because enforcement officers were not consistent in the materials or equipment which they seized from the premises.⁶⁶ There were also suspicions that pirated books which had originated from

Malaysia were exported to far away places such as South Africa.⁶⁷

The situation improved in 2004 with book publishers reporting regular cooperation from the enforcement division with regard to raids against commercial photocopy centers near university campuses.⁶⁸ Nevertheless, book piracy on a commercial scale remained serious with many photocopying operations moving underground or into on-campus facilities such as libraries, student centers and academic buildings so as to avoid the raids conducted on commercial off-campus centers.⁶⁹ Lecturers were also accused of perpetuating the problem by supplying sample copies of original books which they had received from publishing representatives to be used as masters for the illegal photocopying activities.⁷⁰ By moving away from off-campus photocopy shops into on-campus facilities, enforcement officials have experienced difficulties in detecting illegal photocopying activities.⁷¹ Illegal photocopying activities often were undertaken only at night, making it difficult to detect and enforce against the pirates.⁷² Also, the pirates usually produced on a 'print to order' basis to avoid keeping infringing stocks on the premises.⁷³ The infringing goods are then delivered at a designated spot on campus, often in a parking area, through use of a private car or

⁶² See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 533.

⁶³ See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 533.

⁶⁴ See International Intellectual Property Alliance 2003 Special 301 Report on Malaysia at page 533.

⁶⁵ See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 344.

⁶⁶ See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 344.

⁶⁷ See International Intellectual Property Alliance 2004 Special 301 Report on Malaysia at page 344.

⁶⁸ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 361.

⁶⁹ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 361.

⁷⁰ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 361.

⁷¹ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 361.

⁷² See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 365.

⁷³ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 365.

commercial vans.⁷⁴ Van drivers who suspected that they had been tailed after making their deliveries would often return to a legitimate store to confuse enforcement officers.⁷⁵ The landscape of illegal photocopying activities did not change significantly during the years 2006 to 2008, although more raids were conducted against illegal photocopying centers. During the last two years, book publishers have noted a significant upswing in online book piracy, with several sites offering scanned copies of books for download.⁷⁶

2. The Malaysian government approach to copyright piracy

In combating copyright piracy, the Malaysian government has adopted five main interconnected strategies, which are as follows:⁷⁷

- 1) Effective leadership and strong political will
- 2) Appropriate legislative framework
- 3) Efficient legal system
- 4) Strong enforcement regime
- 5) Regular education and public awareness programs

⁷⁴ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 365.

⁷⁵ See International Intellectual Property Alliance 2005 Special 301 Report on Malaysia at page 365.

⁷⁶ See International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at page 333 and International Intellectual Property Alliance 2008 Special 301 Report on Malaysia at page 270.

⁷⁷ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

1) Effective leadership and strong political will

When Malaysia was placed on the USTR Priority Watch List in the years 2000 and 2001, the effect of being stigmatized as a pirate haven acted as a wake-up call to the government that stern measures must be taken immediately to address the dismal copyright piracy situation in the country.⁷⁸ Prior to that, in 1999, the government had set up a high-level Anti-Piracy Task Force to combat piracy in the country. Being placed on the USTR Priority Watch List prompted the government to take swift, immediate measures to rectify the situation. The Task Force was headed by a Cabinet Minister and its members consisted of both government agencies and private sectors whose business involved intellectual property. Cooperation was also sought from other governmental agencies that handled certain aspects of intellectual property laws and these included the Ministry of Energy, Water and Communications and Multimedia, the Attorney-General's Chambers, the Royal Malaysian Police (from the Ministry of Home Affairs), the Royal Customs and Excise Department (from the Ministry of Finance), the National Film Development Corporation of Malaysia (from the Ministry of Culture, Arts and Heritage), the National Film Censorship Board (from the Ministry of Home Affairs), the Multimedia Development Corporation (from the Ministry of Energy, Water and Communications) and local government authorities.⁷⁹ The private sectors that were

⁷⁸ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

⁷⁹ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating

members of the Task Force were those whose businesses involved intellectual property protection and these included the Public Performance Malaysia Sdn Bhd, the Film Producers Association of Malaysia, the Business Software Alliance, the Recording Industry Association of Malaysia and the Motion Picture Association. With such broad membership from diverse areas of intellectual property business, the Task Force deliberated on the most effective strategies in combating copyright piracy. Eventually, a three-pronged approach was adopted. These were, first, to identify the laws impacting on copyright that needed to be strengthened; secondly, to enhance the enforcement regime in the country (including the legal process), and thirdly, to develop educational and public awareness programmes.⁸⁰ With those strategies in mind, the Malaysian government resolutely committed itself to combating copyright piracy of all forms. Till today, the Task Force continues to hold regular meetings to identify and discuss new issues, to identify areas of cooperation, to draw new strategies to combat piracy, to coordinate actions to fight piracy and to report to the related higher authorities. With the existence of strong political will, the government proceeded to implement the strategies which it had agreed upon.

2) Appropriate legislative framework

As an important move on the part of the government to curb optical media piracy at the source itself, the government enacted the

Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

⁸⁰ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

Optical Disc Act in the year 2000. The aim of the Act is to regulate and monitor the production of optical discs. The Act lays down a comprehensive framework to regulate optical media production plants in the country. The Act requires optical media plants to obtain a licence from the government before they are allowed to operate. There are provisions under the Act to allow governmental authorities to conduct inspections without prior warning for the purpose of ensuring that the conditions stipulated in the licence have been complied with. The Act further provides that non-compliance may lead to revocation of the licence and seizure of the production equipment. All licensed plants are required to use unique source identification codes, both in replication operations and in the production of masters. Regulations made pursuant to the Act require records to be made on the inventory of optical grade polycarbonate, production runs, shipment of finished products and production orders received, including copyright licences or other documents relied on for authorization. The Act makes it an offence to manufacture optical discs without a valid licence, to manufacture optical disc without a Manufacturer's Code and to fail to maintain records of raw materials (polycarbonate), suppliers and customers.

To complement the government's efforts at curbing optical media piracy, the Trade Descriptions (Original Label) Regulation 2002 was introduced. That Regulation makes it a mandatory requirement for all distributors of optical discs to affix original labels in the form of holograms with special security features on all copies of optical discs distributed in the country including imported discs. The hologram stickers are available for purchase from the government. The government began enforcing this requirement on 15 July 2003.

To keep abreast of technological developments and as a precautionary measure, the Ministry of Domestic Trade and Consumer Affairs modifies and improves the shape of the holograms every two years. Noting that there have been incidences of hologram abuse, such as the illegal duplicating of the original hologram, the government introduced a more refined hologram sticker with better security features in January 2008.⁸¹ The new hologram labels have running serial numbers that help the public identify original products from pirated ones. This also facilitates the enforcement officers to detect the authenticity of the hologram labels. However, it is noteworthy that there have been criticisms and doubts among some quarters about the efficacy of such a program.⁸²

Apart from enacting the Optical Disc Act 2000, the government also made amendments to the Copyright Act 1987 in July 2003 to provide wider powers to the enforcement officers to arrest without warrant. Section 50A of the Copyright Act 1987 allows any Assistant Controller to arrest without warrant any person whom he reasonably believes has committed or is attempting to commit copyright piracy. At the same time, the amendments also provide for stiffer penalties to punish and deter copyright infringers. In addition, the Act allows an Assistant Controller of Copyright or a police not below the rank of Inspector to seize infringing articles and contrivances,⁸³ to break open doors, enter forcibly, remove by force any obstruction to entry and detain any person

until the place is searched,⁸⁴ and to seal infringing articles and contrivances.⁸⁵

To provide copyright protection in digital works, the Copyright (Amendment) Act 1997 lays down two new types of infringement in relation to digital works. The first is found in section 36 (3) of the Copyright Act 1987. The section renders it an infringement for any person to circumvent any effective technological measures that are used by authors to restrict acts which are not authorized by the authors in respect of the copyright work. This provision originated from Article 11 of the WIPO Copyright Treaty of 1996 which effectively acknowledges that the mere conferring of rights on copyright owners is inadequate in the digital realm where copies of works can be reproduced easily and quickly. Instead, copyright owners need to resort to technology to assist them in preventing unauthorized reproduction of their works but the technology used by them could itself be circumvented. Hence, the need arose to ensure that acts of circumvention should not be tolerated by the law. The second type of infringement introduced to provide a more adequate protection in the digital environment is found in section 36(4) of the Copyright Act 1987. The section prohibits any person from removing or altering any electronic rights management information without authority. Rights management information is defined in section 36(5) of the Act as any information which is in electronic form that identifies the work, the author of the work, the owner of any rights in the work, the information about the terms and conditions of use of the work or any number or codes that represent such information.

⁸¹ See The Star, 12 December 2007.

⁸² See, for instance, International Intellectual Property Alliance 2007 Special 301 Report on Malaysia at pages 342.

⁸³ Copyright Act 1987, section 44(2).

⁸⁴ Copyright Act 1987, section 45.

⁸⁵ Copyright Act 1987, section 47.

There have been proposals by the Ministry of Domestic Trade and Consumer Affairs to have a law to specifically criminalize the act of camcording in cinemas as a strict liability offence. In that way, enforcement officers need not be concerned with having to establish the existence of copyright in court prosecutions.

3) Efficient legal system

As the number of intellectual property disputes increased, the idea of establishing an intellectual property court in Malaysia was mooted in the year 2004. All intellectual property cases were at that time heard by judges sitting in commercial courts. Both the Ministry of Domestic Trade and Consumer Affairs and the Intellectual Property Corporation of Malaysia prepared a concept paper on the proposal to establish an Intellectual Property Court in Malaysia. In September 2005, the Ministry of Domestic Trade and Consumer Affairs formed a Steering Committee to look into the issues pertaining to the setting up of the specialized court. The Steering Committee made a number of study visits to countries which had established Intellectual Property Courts, such as Thailand, Japan, Korea and United Kingdom in order to examine the pros and cons of setting up such courts, particularly from the point of the expediency and efficiency in disposal of intellectual property cases.

With the strong support of various related Ministries and agencies, particularly the Federal Court, the government established the Intellectual Property Court on 6 June 2007. However, as early as 1 January 2006, initial steps had already been taken to assign the Kuala Lumpur Criminal Sessions Court 4 specifically for criminal offences relating to intellectual property. This court is today officially known as the first Sessions Court (Intellectual Property). The system of

specialized Intellectual Property Courts will in due course be extended to the other states in Malaysia. Thus far, the government has approved the establishment of fifteen Criminal Sessions Courts throughout the country to be specialized courts hearing intellectual property offences. Each state in the country will have a specialized intellectual property court hearing intellectual property offences known as 'Sessions Court (Intellectual Property)'. There are also High Courts with both civil and appellate jurisdictions known as 'High Court of Malaya (Intellectual Property)' or 'High Court of Borneo (Intellectual Property)'.

With the establishment of the Intellectual Property Court in Malaysia, the hope is that the Malaysian economic growth and social development as a whole would be further enhanced and the public in general would be more appreciative of the importance of intellectual property. In the middle of 2008, it was reported that there was still a backlog of intellectual property cases in the specialized intellectual property court because lawyers were said to be taking too long to compile court documents.⁸⁶ Clearly, the success of the intellectual property court depended heavily on the cooperation of lawyers in preparing the necessary documents needed for the trial of their cases.

With regard to the training of judges and judicial officers on intellectual property disputes, the Intellectual Property Training Centre at the Civil Service Training Institute has also helped to organize programs specifically tailored for the judiciary.

Apart from the establishment of specialized courts, the government has also set up a special prosecution team within the enforcement division of the Ministry of

⁸⁶ See New Straits Times, 16 May 2008.

Domestic Trade and Consumer Affairs that specifically handles intellectual property cases. Officers from this special prosecution team have been sent for advanced training.

4) Strong enforcement regime

In Malaysia, the enforcement of copyright piracy can be handled by either the enforcement division of the Ministry of Domestic Trade and Consumer Affairs or by the police. The government's enforcement division was formed on 17 April 1972 as a division of the Ministry of Domestic Trade and Consumer Affairs. As of early August 2008, the enforcement division is manned by 2174 officers and has 56 branches throughout the country. Its main function, which is to enforce the country's laws so as to ensure there are no unethical trade practices, also entails ensuring that intellectual property rights in the country are not flouted.

The enforcement division adopts two main types of approaches in its enforcement against infringement of intellectual property rights. These are proactive and reactive actions. In proactive actions, the division plans a schedule for continuous raids to be carried out against targets suspected of dealing with infringing goods. A number of teams are assigned to different places each day to conduct proactive inspections and exercise the powers to seize the suspected goods and detain persons committing the offences. In reactive actions, raids are conducted upon complaints received from copyright owners or the general public or information gathered by the division's own intelligence team. An action plan is drawn up before any raid is carried out. The effectiveness of the raid clearly depends heavily on the accuracy of the information received or gathered. Apart from proactive and reactive approaches, the division also employs preventive actions by stationing

officers at locations known to be favorite spots for pirates.

On 8 August 2001, the government ordered a nationwide ban to prohibit the sale of CDs and VCDs in open premises including the night markets, road side pavements and open premises. This ban still remains in force till today.

In 2002, the government launched a nationwide campaign, known as *Ops Tulen*, which has the aim of teaching consumers to respect intellectual property. Pursuant to that campaign, the Business Software Alliance and the government sent numerous warning letters to companies suspected of using pirated software and inspected the premises of a large number of companies. The Business Software Alliance has noted that the *Ops Tulen* campaign, which still applies till today, has been successful in delivering the message to consumers.⁸⁷

In 2004, the government set up a Chemist Optical Disc Forensic Laboratory to analyze and verify the production details found on optical discs. Such forensic facility enables the enforcement team to trace the source of production of an optical disc for purposes of investigation and prosecution.

As part of the government's efforts to prevent the export of pirated goods out of the country, a special export unit was established in April 2005. Officers from the unit are stationed at exit points to monitor and intercept the optical discs destined for export. To assist in the detection of the pirated goods, the government has placed high tech scanner machines at the major airports in the country.

In December 2006, the government launched a new anti-piracy program known as 'Operation Eagle', which is a new zero

⁸⁷ See The Star, 27 May 2008.

tolerance strategy. It involved an intensive six weeks special operation targeted at Kuala Lumpur city's known favorite spots for copyright pirates. Surprisingly, the operation revealed that a significant proportion of the customers purchasing pirated goods were not Malaysians but tourists instead.⁸⁸ Furthermore, there was evidence that some of those involved in the piracy business belonged to international syndicates.⁸⁹

In early 2008, the government set up a new anti-piracy canine unit known as K-9 to further combat the optical media piracy situation in the country. This unit has its origins in March 2007, when the Motion Picture Association brought to the country two dogs by the names of Lucky and Flo to help in the detection of pirated optical discs. The dogs were taken along in a number of raids to sniff out the whereabouts of illegal optical discs and were extremely effective in detection. They returned to the US in February 2008 and were replaced by two other sniffer dogs which were donated by the Motion Picture Association. Realizing the potential of using dogs to sniff out optical discs, the K-9 unit was established early this year.

5) Regular education and public awareness programs

Raising public awareness and educating the public are important facets in the fight against

⁸⁸ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

⁸⁹ See Keynote address by the Honourable Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia delivered at the Third Global Congress on Combating Counterfeiting and Piracy, Geneva, Switzerland on 30 January 2007.

copyright piracy. Since the turn of the century, the government has been proactive in taking steps to achieve this. The government's efforts include conducting road shows, increasing public's exposure to intellectual property through the media, distributing advertising and educational information packs and organizing seminars. The Malaysian Intellectual Property Office also celebrates The World Intellectual Property Day annually by having various activities, such as exhibitions, seminars and competitions. The competitions cater for different levels including schoolchildren, the industry and the public.

Apart from the government, industries have also participated in educating the public on intellectual property awareness. For instance, at the end of 2007, RIM commenced a program known as 'I Love Music' to inculcate among schoolchildren the love for music and create respect for intellectual property.

3. Challenges

Copyright piracy is not a static phenomenon in the sense that the shrewdness and ingenuity of pirates knows no bounds. This is evident from the myriad tactics that pirates have adopted over the years to evade the detection of enforcement officers. In the 1990s, when the enforcement of copyright piracy in the country was rather laid-back, piratical operations were conducted openly in night markets, shopping complexes and street pavements. With the government's clampdown on such activities subsequently, pirates have retreated to underground activities which made detection difficult at times. The quest for quick profits serves as one of the main reasons for such continued activities. Thus, enforcement officers and industries must constantly be on the look out and be in touch with the new *modus operandi* of the pirates.

As in the days of long ago, technology is a double-edged sword because the advances of technology have been abused by copyright pirates to further their own plans. The Internet is a reproduction machine that is capable of delivering illegal copies worldwide within seconds and, as yet, no national law is sufficiently effective to prevent such activities from occurring. Even with regard to the illegal file-sharing of music, movies and texts via the Internet, there is uncertainty as to the extent of such activities in the country. Detection is therefore very difficult and it is incumbent on enforcement officers to familiarize themselves with the ways in which copyright piracy can take place in the digital realm.

As international trade increases and digital technology reaches the four corners of the world, copyright piracy is an excellent money-generating business for many international criminal syndicates. Many of the syndicates are so organized in their activities that they are able to escape the suspicion of the enforcement officers. As a result of the international nature of copyright piracy, enforcement beyond borders is inevitable and this demands international cooperation between the enforcement agencies, customs and police in all countries.⁹⁰

In certain important aspects, the copyright law in Malaysia needs to be clarified so that the public knows exactly the boundaries of their rights. For instance, there is little guidelines on copying for educational use. Also, the liability of Internet Service Providers is not provided for under the current Copyright Act 1987. Proving the subsistence and ownership of copyright in a work has, at times, been an obstacle in the prosecution of copyright piracy. There have been suggestions that section 42 of the Copyright Act 1987, which provides for the admissibility of

affidavits to prove ownership in a copyright work, needs to be reconsidered.

The lackadaisical attitude of the public towards respecting intellectual property protection needs to be addressed. For many years, the Malaysian public lived in a culture where illegal copies of copyright products could be purchased cheaply and books photocopied at only a small percentage of their original prices. Effort and time is therefore needed to impress upon them the importance of respecting intellectual property and the dire consequences of copyright piracy. In this regard, awareness and respect for intellectual property should be instilled early on during their schooling days so as to create a new generation of individuals that understand what copyright is and the importance of respecting it.

Of late, there have been instances where pirates have intimidated enforcement officers. In the past, pirates would try their utmost best to escape whenever they realize enforcement officers were commencing raids on their premises. However, pirates have now become bolder and have attempted to put enforcement officers' lives in danger. A number of senior officials in the government's enforcement division have received death threats in the mail. In November 2007, some pirates rammed into the enforcement officers' vehicles and fought with them. There was an occasion where five men armed with bricks damaged two vehicles belonging to the enforcement officers during a raid at a shopping mall in Johore Bahru.⁹¹

4. Conclusion

In the light of the above discussion, it cannot be denied that Malaysia has progressed from a piracy haven at the end of last century to a

⁹¹ See The Sunday Star, 18 November 2007.

nation pursuing internationally recognized compliance standards. The collaboration between the industries and government agencies has proved to be a right direction in combating copyright piracy. Cooperation from the public in respecting copyright and ceasing to purchase illegal copyright products is also imperative as a trade without customers will die a natural death in no time. As was aptly put by the then Minister of Domestic Trade and Consumer Affairs, Datuk Haji Mohd Shafie Haji Apdal:⁹²

Whilst we are not complacent, we can rightly claim some considerable successes. However, the Malaysian government is well aware that this is not a problem that will fade away now that we have tackled its worst excesses. Our intention is to maintain the pressure and remain vigilant. We will listen to and carefully evaluate any ideas or accounts of the experiences of others that will enhance our work in this area for Malaysia prides itself on being a responsible member of the world community.

⁹² See paper delivered by Datuk Haji Mohd Shafie bin Haji Apdal, the then Minister of Domestic Trade and Consumer Affairs, Malaysia, at the Second Global Congress on Combating Counterfeiting and Piracy held in France on 14-15 November 2005.